

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3102 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PRATAPSINH LAXMANSINH VIHOL

Versus

STATE OF GUJARAT

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Appearance:

MR JR NANAVATI for Petitioner

None present for Respondents No. 1, 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/02/98

ORAL JUDGEMENT

Heard the learned counsel for the petitioner.

2. The petitioner, an Ex-Police Inspector of the Police Department of the State of Gujarat, filed this special civil application, and challenge has been made to the order under which he was ordered to be compulsorily retired from the services.

3. From the special civil application, it comes out that the petitioner was punished for minor penalty under the order dated 31st September, 1975, i.e. his one increment was reduced for the period of three months. Again for another misconduct in the year 1979, the petitioner was punished and his increment was stopped for the period of six months. In the rejoinder to the reply, the petitioner admitted that he was served with the adverse remarks for two years. So there were, in all, four adversities in the service record of the petitioner, namely, two penalties and adverse remarks in his annual appraisal performance reports for two years.

4. The petitioner has very conveniently not disclosed in the special civil application that he has been served with the adverse remarks in his two annual appraisal performance reports. So this material fact has been concealed by the petitioner. However, in the rejoinder this fact has been disclosed, but the petitioner again very conveniently has not given out for which years he has been given the adverse remarks. This conduct of the petitioner deserves to be deprecated. He should be fair to the Court and it is his duty to fairly and candidly disclose all the material facts when he has approached to this Court under its extraordinary powers under Article 226 of the Constitution.

5. The learned counsel for the petitioner contended that the petitioner has been given the promotion after the two adversities i.e. the minor penalties, and as such, the same could not have been taken into consideration for the purpose of forming the opinion that he has to be retired compulsorily from the Government services in the public interest.

6. I do not find any substance in this contention of the learned counsel for the petitioner. Selfsame material no doubt cannot be used for the purpose of denying further promotion once after that material the officer or the employee has been promoted. Washing of theory of adversities in the service record of the officer/employee may be vital in the cases of further promotion but that adversities remain as part of the service record of the petitioner and for the purpose of considering his suitability to continue in the services in the public interest it is certainly relevant and admissible material on the service record of the petitioner. In this respect, reference may have to the decision of the Hon'ble Supreme Court in the case of State of Orissa vs. Ramchandran Das reported in 1996 (5) SCC 331.

7. In the presence of the adversities as noticed earlier in the service record of the petitioner, it cannot be said that the formation of opinion to retire the petitioner compulsorily from the services is perverse or without there being any material on record.

8. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated.

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